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E. Everett

CASE OF JAMES H. PECK

SUBSTANCE OF AN ARGUMENT

DELIVERED

BEFORE THE DISTRICT COURT OF THE UNITED STATES,

At the first session thereof, held at St. Louis, on the fourth Monday in November, 1824, *pursuant to an act of Congress, entitled "An act enabling claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims.—By L. E. Lawless, Counsellor at Law.*

DECEMBER 22, 1830.

Ordered, That the following documents be printed for the use of the Senate.

PREFACE.

The argument of which the following pages contain an accurate outline was delivered at the first session of the district court of the United States, held on the 4th Monday of November, 1824, for the adjudication claims to land situated within the limits of the State of Missouri, founded on concessions, warrants, or orders of survey, made by the Spanish or French authorities previous to the 10th March, 1804.

Inasmuch as the subject is one of very general interest, not only in the State of Missouri, but in the Territory of Arkansas, where similar claims are to be adjudicated, it is believed that the publication of this argument may not be without its use. The subject has hitherto been involved in considerable obscurity, and has never, even in Congress, been completely developed. During the twenty years which have elapsed since the occupation of Upper Louisiana by the United States, the claimants to land under French and Spanish grants have had to contend, not with fair and open argument, but with secret slanders or ignorant misrepresentation. Now that these claims are to be investigated in a court of justice, they can no longer suffer from these unworthy causes. If, as they believe, their titles are protected by the principles of municipal and international law, those titles will be confirmed, and, though late, (too late for many of them,) their long withheld property will be restored to them. If, on the other hand, these claims shall be rejected, they will, at least, have the satisfaction to reflect that no sin-

ister means have succeeded in defeating them; and that, if error has been committed, it will have been that inevitable error to which the best of huma tribunals is more or less subject.

The circumstances of the claim in which the following argument was delivered are in some respects peculiar; but the doctrines and principles which it was the counsel's object to establish are applicable to the great majority of French and Spanish land titles in Upper Louisiana, and, it is believed, should govern the decision of the court upon them.

It was at the suggestion and request of the Judge of the district court that this note of argument has been written and submitted to him. The considerations already mentioned have induced the friends of the claims to believe that it should, through the medium of the press, be laid before the public. The claimants do not fear discussion or investigation, but, on the contrary, invite both. If the argument here offered be sound, it ought to have its due effect; if it be fallacious, by publishing it, all hope is extinguished of its errors escaping detection.

We have subjoined to this report a few documents, translated from the original Spanish, which, as far as we know, have not before been published in the English language, and which sustain or illustrate some of our principal positions.

NOTE OF ARGUMENT

On claim of Antoine Soulard, before the district court of the United States, to confirmation of a concession and survey of ten thousand arpens.

On the 20th April, 1796, Zenon Trudeau, Lieutenant Governor of Upper Louisiana, granted to Antoine Soulard, and his heirs, ten thousand arpens, to be located on vacant land belonging to the royal domain.

On the 20th February, 1804, by virtue of, and pursuant to, said concession, said grant was located and surveyed on Cuivre river, within the present limits of the State of Missouri.

On the 8th of March, 1804, said survey was duly certified and recorded by the Surveyor General of the then province of Louisiana.

Between the 8th March, 1804, and the 1st March, 1806, the said original concession and certificate of survey were destroyed by accident, amongst other papers belonging to the grantee, who, in consequence of that loss, and in ignorance of his rights and misconception of the law, omitted to file notice of his claim with the Recorder, under the law of Congress of 2d March, 1805, which required notices of claims founded on titles therein mentioned to be filed with the Recorder before the 1st March, 1806.

Under the same erroneous impressions, Mr. Soulard omitted to avail himself of the provisions of the act of 3d March, 1807, which extended the time for filing claims to 1st July, 1808.

As soon as Mr. Soulard became aware of his mistake, he presented a petition to Congress, praying a confirmation of his claim, which petition was referred to the Committee on Private Land Claims, February 27th, 1818.

In consequence of a general law having been reported, which would necessarily have embraced the claim, no special report was made by the committee.

On the above state of facts, two main questions arise—

1st. Supposing the original concession to have been good, can the claimant, upon proof of its destruction, avail himself of the title which it conferred?

2d. Supposing that, notwithstanding its destruction, he can, upon proper proof of its existence and execution by the Lieutenant Governor, use it as a ground of claim, is the concession and survey such a title as ought now to be confirmed by this court under the act of Congress?

Upon the first question no argument will be here offered, as it is supposed that, if the proof of the execution and contents of the concession be given, upon no principle of law or equity can the affirmative of the proposition be disputed.

But the proof of the execution and contents of the concession is complete, viz:

1st. The declaration and admission of Zenon Trudeau, made at different times during his command in Upper Louisiana;

2d. The oath of a credible witness, Col. C. D. Delassus, who saw the concession in the hands of grantee;

3d. The proof of its existence resulting from the record of survey made before its loss, and in which it is recited and referred to.

It may, however, be proper to observe that the omission to file the claim under the acts of 1805 or 1807 cannot affect Mr. Soulard's rights under this particular concession, because,

1st. The law of 1805 only requires those claims to be filed which were founded on *incomplete* titles subsequent in date to 1st October, 1800; and, therefore, does not affect the present claim, which is by virtue of a concession made on the 20th April, 1796;

2d. The act of 1807, which extends the time for filing to 1st July, 1808, has no more extensive operation as to claims excluded than the act of 1805.

The act of Congress of last session lets in every claim, no matter whether filed or not with the Recorder, and no matter what is the date of the incomplete title on which it is founded, provided it be not subsequent to the 10th March, 1804.

To demonstrate the affirmative of the 2d proposition, namely, that the concession and survey in this case constitute such a title as should be confirmed under the late act of Congress, let us first examine that act.

By section 1st, every French or Spanish grant, concession, warrant, or order of survey, legally made, granted, or issued, before the tenth day of March, 1804, by the proper authorities, to any person or persons resident in the province of Louisiana at the date thereof, or on or before the tenth day of March, 1804, and which was protected or secured by the treaty between the United States and the French Republic, of the 30th of April, 1803, and which might have been perfected into a complete title, under and in conformity to the laws, usages, and customs of the Government under which the same originated, had not the sovereignty of the country been transferred to the United States, is declared to be entitled to confirmation.

By section 2d, this court is, by a final decree, to settle and determine the validity of the title, according to the law of nations, the stipulations of any treaty and proceedings under the same, the several acts of Congress in relation thereto, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants and the United States; which decree shall, in all cases, refer to the treaty, law, or ordinance, under which it is confirmed or decreed against.

It is contended that the present claim is entitled to confirmation, because,

1st. The concession was made to a person residing in Louisiana at the time it was made;

2d. The concession was legally made before the 10th day of March, 1804;

3d. The concession was made by the proper authority;

4th. It was protected by the treaty of cession, 30th April, 1803;

5th. It might have been perfected into a complete title conformably to the laws and usages of former Government;

6th. It is protested by the law of nations;

7th, and lastly, because it is recognised and protected as entitled to confirmation, at least to the extent of a league square, by the laws of Congress heretofore made on the subject of such titles.

The fact of the concession having been made to a person residing in Louisiana at the date, is matter not merely of ordinary proof, but is an historical and recorded fact within the knowledge of the court.

The 2d and 3d grounds of its claim to confirmation will be considered together, inasmuch as they are convertible propositions. It is considered that the concession was legally made prior to the 10th of March, 1804, and made by the proper authority, because,

1st. The date and execution are proved;

2d. The concession was made by the Lieutenant Governor of Upper Louisiana.

It is contended that the Lieutenant Governor had power to make such a grant, and that his power is demonstrated by,

1st. The uniform practice and usage of Lieutenant Governors in Upper Louisiana, from the first establishment of a government in that province;

2d. The laws and ordinances of the Spanish sovereigns;

The usage and practice of the Lieutenant Governors may be ascertained by reference to the history of Upper Louisiana, from the year 1770, when Spain took possession of that province, down to the 10th March, 1804, when it was delivered up to the United States. During the whole of that period, it is demonstrated by the records and archives, as they have been transferred to the officers under the Government of the United States, that it was the uniform usage and practice of the Lieutenant Governor to make those concessions.

There exists not a single instance in which the power of the Lieutenant Governor in Upper Louisiana to grant any quantity of land has been questioned or denied by the superior authority.

Each Lieutenant Governor followed the usage of his predecessor, which, certainly, it is not to be presumed that he would have done if that usage had not been recognised as *legal* by the Government which appointed him.

The perfect security with which the inhabitants of Louisiana acted on those concessions—bought, sold, transferred, and disposed of them by act *inter vivos*, or by last will and testament, demonstrates the existence of the usage, and the general impression that those concessions were legally made, and by the proper authority.

Judicial sales of intestates' estates, including incomplete titles of this description, have been made not only under the sanction of the Lieutenant Governor of Upper Louisiana, but have been ratified by the supreme authority at New Orleans.

There is no instance on record of any one of these sales having been *rescinded* on the ground that those concessions were nullities, and not susceptible

of sale for valuable consideration, as they certainly would be if the Lieutenant Governor had not authority to make them.

The practice and usage have been recognised in a variety of instances by the Governors General of Louisiana.

The following complete titles, within the knowledge of the undersigned, have been granted by Governors General of Louisiana upon concessions made by the Lieutenant Governor of Upper Louisiana.

1st. A complete title to Gratiot, on a concession by Cruzat, previous to 1790, of 7056 arpens, for the whole of that quantity.

2d. A complete title issued by the Governor General, Baron de Carondelet, on the 2d April, 1797, on two concessions of 2160 superficial arpens—the one made by Don Manuel Perez, Lieutenant Governor of Upper Louisiana, dated 26th May, 1790, the other by Zenon Trudeau, Lieut. Governor, dated 11th September, 1796.

3d. A complete title by Governor General Don Manuel Gayoso de Lemos, dated 1st March, 1798, on a concession of 1480 arpens made by Zenon Trudeau, Lieut. Governor, dated 19th November, 1796.

In those complete titles, which are ready to be produced for the inspection of this court, the Governors General specifically refer to the concession, and recognise the power of the Lieut. Governor to make it. No new condition is imposed, other than that of complying with the "Reglamento del asunto," that is to say, the general regulation of the Government touching lands granted.

Not only have the Governors General thus ratified and recognised the power to grant of the Lieutenant Governors of Upper Louisiana, but the Intendant General has also done so, to whom (as shall be hereafter noticed) was delegated by the King the power of issuing complete titles, after it had been taken away from the Governors General.

The following complete titles, issued by the Intendant General, Don Juan Ventura Morales, and which are ready to be produced to the court, demonstrate this proposition.

1st. A complete title for 900 arpens on a concession issued on the 6th December, 1798, by Zenon Trudeau, Lieut. Governor, in favor of Don Santiago Delassus de St. Vrain. This complete title bears date the 28th April, 1802.

2d. A complete title for 1042 arpens, on concession by Zenon Trudeau to Antoine Soulard and his heirs, dated 28th April, 1802.

3d. A complete title, dated 5th June, 1802, for 8000 arpens, on a concession and order of survey by Zenon Trudeau, dated 18th January, 1798.

In those complete titles the Intendant General specifically refers to and recognises the concession obtained from the Lieut. Governor. The terms used in the title issued in favor of Antoine Soulard are these: "Por quanto habiendose presentado en este tribunal Don Antonio Soulard, representando que *habia obtenido del Teniente Gobernador de Sn. Luis de Illinois, Dn. Zenon Trudeau, la concession de mil y quarenta y dos arpanes de tierra:*" which, translated into English, are as follows: "Inasmuch as Don Antonio Soulard has presented himself to this tribunal, submitting that he has obtained from the Lieutenant Governor of St. Louis of the Illinois, Don Zenon Trudeau, the grant (or concession) of 1042 arpens of land."

The language of the other two complete titles made by the Intendant General is of the same import, and leaves no doubt as to the ratification of the

act of the Lieutenant Governor, and of the usage and practice of granting such original concessions.

It has been already observed that original concessions, and the land granted by them, before any complete title had been issued thereon, were objects of sale and transfer *inter vivos*, and of distribution and sale as property of testators or intestates.

In support of these propositions, we refer to the records in the office of the clerk of the circuit court for the county of St. Louis.

Amongst a number of others, we find the following sales and transfers recorded:

1st. 18th February, 1775, public sale sanctioned by Pedro Piernas, Lieut. Governor, of 2½ arpens by 40, belonging to the estate of Guillaume Bizet, purchased by Charles Bizet.

2d. 2d October, 1774, public sale of a tract of land of 5 arpens by 40, at the place called Belle Fontaine, under the decree of the Lieut. Gov. Pedro Piernas, for sale of same, at request and demand of Mr. John Bte. Sarpy, attorney in fact of Louis Chamart: said land purchased by P. Perrault, No. 42.

3d. 13th November, 1774, public sale of land, the property of J. B. Martigny, containing 4 arpens in breadth by the depth from the Mississippi to the hill, purchased by Charles Bizet, No. 148.

4th. 4th July, 1799, public sale of the property of the deceased Laclede Liguest, to wit: a tract of 6 by 40 arpens of land in Big Prairie, bought by Madame Chouteau, No 264, by *virtue* of the decree of Fernando de Leyba, Lieutenant Governor.

5th. 4th July, 1799, public sale of the mill and dependencies belonging to the estate of Laclede Liguest, deceased, bought by Auguste Chouteau, sold by virtue of decree, F. de Leyba, Lieut. Gov., No. 265.*

6th. 12th June, 1801, public sale after the failure of Hyacinthe St. Cyr, (merchant,) made at the request of the creditors, and by virtue of a decree of Charles D. Delassus, Lieut. Gov., 919 arpens, situate on Crevecœur, county of St. Louis, purchased by James Richardson, No. 1500: on same day, as part of same estate, 573 arpens at St Ferdinand: on same day, ditto, 12 arpens by 40, No 1500. [The No. is that which the document bears in the index to the Spanish and French records in the clerk's office.]

7th. 14th April, 1802, deed of partition before Lieut. Gov. Delassus, between the heirs of Madame Cerre, of divers tracts held under incomplete titles, No. 1500.

It is submitted that the concession at present under consideration is equally legal with all those above referred to, and which have been recognised as such by the supreme Spanish authority; and is equally legal, and equally the subject of sale, transfer, and distribution, as any of those recorded in the office of the clerk of the circuit court for the county of St. Louis.

2dly. The Lieut. Gov. of Upper Louisiana was authorized to make this concession by the laws and ordinances of the Spanish sovereigns.

In support of this proposition, we refer to the 'royal ordinance,' dated 15th October, 1754.

This royal ordinance was republished in 1786, with an additional ordi-

* This sale has been sanctioned by decree of the supreme authority at New Orleans; and the land on which said mill stands has been since confirmed to Auguste Chouteau, as representative of Laclede Liguest, deceased, the original grantee, by the Board of Commissioners.

nance or law, vesting in the Intendants and subdelegates of the kingdom of *New Spain* the power of granting lands, which power had heretofore been vested in the Viceroys, Presidents of Audiences, and subdelegates appointed by said Viceroys or Presidents.

This ordinance, as published in 1786, is now in the office of the Department of State in Washington city; and those articles of it which are applicable to the questions arising on the Missouri land claims have been copied from it, and, with correct translations, are ready to be submitted to the court.

By the appendix to ordinance of 1754 (No. 10 in that of 1786) after reciting the evils resulting from the royal order of the 24th November, 1735, whereby the claimant of land was obliged to apply to the King himself for complete title, the King ordains as follows: "I have resolved that in the gifts (mercedes) sales (ventas) and arrangements (composiciones) of royal lands, (realengos) places (sitios) and uncultivated grounds (valdios) now made, or which hereafter shall be made, there shall be observed and practised precisely what is contained in this instruction, &c.

"First. That, from the date of this my royal resolution, henceforward remains exclusively to the office (alcargo) of the Viceroys and Presidents of my Royal Audiences of those kingdoms, the faculty of appointing the subdelegate ministers, (ministros subdelegados) who are to exercise and make sale and arrangement (ventas y composiciones) of the lands and uncultivated grounds (de las tierras y valdios) which belong to me in said dominion, expediting to them, the subdelegates, the nomination (nombramiento) or title, respectively, with an authentic copy of this instruction. [The instruction then points out the mode of informing the Secretary of State of those nominations, and authorizes the subdelegates to commission others, distant from the place of their residences, *as was before done*, (como antes se executaba) and excludes the Council of the Indies from the direction and management of this branch of the royal finances.]

The 5th article ordains that all titles originated by the subdelegates since 1700, and confirmed by the King, shall remain good; or, if they were confirmed hy the Viceroys and Audiences, while that power was vested in them, (that is, previous to the ordinance of 1735,) they shall also remain valid; also, that those who possessed lands without such confirmation shall solicit confirmation from the Audiences of their district, and the other ministers to whom the faculty of confirmation is given by this instruction; which Audiences and ministers shall examine the title originated by the subdelegate, and, if *no fraud or collusion exist*, and on proof being given that there has been paid into the royal chest the price of the sale or arrangement, (venta o composiciones) and the tax called media annata, and adding, besides, a corresponding pecuniary donation, (y haciendo de nuevo aquel servicio pecuniario que parecea correspondiente,) they shall despatch, in the royal name, the confirmation of the titles, &c.

The 9th article of the above ordinance of 1754 ordains, in substance, that the respective Audiences, by provinces, shall despatch, in the royal name, the confirmation, without any other judicial expense to the parties than the fees appertaining to the said provinces, as fixed by law; for which purpose, the subdelegate is to transmit the proceedings had respecting the sales or arrangements of which the confirmation is demanded, and they may agree on the pecuniary service which they ought to pay for this new favor.

The 10th article ordains, in substance, that, to avoid costs and delay, if the Audiences should direct new proceedings, the subdelegates, in each

case, are to transmit the original acts, in order that, if no objection presents itself, they may be returned, (to the subdelegate) and title delivered; or in order that what is necessary may be done, (by party or subdelegate) as pointed out, and thus to expedite the despatch of royal comfirmations, without the duplication of a new title.

Article 11th ordains, in substance, that the Audiences are to entertain appeals from subdelegates, without putting the parties to the expense of an appeal to the Council.

Article the 12th, (of the above ordinance of 1754,) the translation of which is here given *in extenso*, ordains,

"That, in those provinces distant from the seat of the Audiences, or where the seas may intervene, as Carracas, Carthagena, Buenos Ayres, Panama, Yeutan, Cumana, Margarita, Porto Rico, and others in "*equal circumstances*," (de iguales circumstancies,) the confirmation shall be despatched by their Governors, in unison with the royal officers, and the Lieutenant Judge General, where there is one; and that the same ministers shall also determine the appeals which may be made from the subdelegate who shall have been appointed, or may be appointed, in each of the aforesaid provinces and islands, without referring to the Audience or Chancery Court of the district, except in case of the two sentences not being conformable, and this of duty, and in the form of a consult, (porvia de consulta,) in order to avoid the expenses of applications for relief by appeal; and, wherever there shall exist two royal ministers, the most modern shall perform the duty of defender of the royal finances in these causes, and the senior that of Assistant Judge to the Governor, consulting, where there is no Auditor or Lieutenant Judge of the Governor, and the doubt which may arise is matter of law, with any other lawyer within or without the district; and, in those places where there is but one royal minister, he shall name as defender of the royal finances any intelligent person resident in the place; it being likewise the duty of the Governors, with their Assistant Judges, to examine into the compositions (composiciones) of the subdelegate, the same way as is expressed with respect to the Audiences."

At the date and promulgation of the above ordinance of 1754, the province of Louisiana belonged to France, and was governed, not by any Spanish custom, usage, or law, but by the custom of Paris, and the ordinances of the French sovereign. It is, however, submitted that, from the treaty of Fontainebleau, November 3, 1762, or at least from the date of the actual occupation of Louisiana, under that treaty, by Spain, the Spanish laws and ordinances were in force, and became applicable to the province of Louisiana, as far as related to the original grant and final confirmation of lands belonging to the royal domain. It is therefore contended that, by virtue of the above cited 12th article of the ordinance of 1754, the Governors General and subdelegates of Louisiana became vested with all the powers by that article given to the Governors and subdelegates of Carracas, and the other places therein mentioned. It is manifest that, if Louisiana had been, at the date of that ordinance, a province belonging to Spain, and had not been specifically mentioned, it nevertheless would have been included in its protection by the comprehensive words, "and others in equal circumstances." Louisiana was, perhaps, more than any other province, or would have been, within the purview of the ordinance. It was separated by the sea on the one side, and by a vast extent of uninhabited or savage region on the other, from the seats of the Viceroys or Audiences. The commu-

nication was rare and difficult, at that time, between Louisiana and Spain, or any of its South American dominions. At the date of the treaty of 1762, or of the actual occupation of Louisiana by Spain in 1769, the circumstances of the province were the same. Its communication with South America had not been increased or facilitated since 1754; and, in a political, commercial, or geographical point of view, it was more separated and detached than any of those places mentioned in the 12th section of the ordinance cited.

The usage and practice which have already been shown to exist in Louisiana demonstrate that such was the construction put on this 12th article by the Spanish authorities in that province; but, besides this uniform usage, the proclamation of Governor General O'Reilly, in 1769, whereby he announces to the people of Louisiana that the Spanish laws are thenceforward to have force, specifically applies the ordinance of 1754 to the colony of which he had so recently assumed the government.

Assuming, then, as sound doctrine, that, at least from the year 1769, the ordinance of 1754 was law in Louisiana, it manifestly follows that the concession in the present case was made in conformity with the provisions of that ordinance.

Here it may be proper to observe, that, in Upper Louisiana, the Lieutenant Governor was clothed with both civil and military power. He was not only commander in chief of the troops, but he was also the highest judicial authority. It was in his civil capacity that he granted or sold the lands belonging to the royal domain. In this concession he acted in his capacity of subdelegate minister, (ministro subdelegado,) as he is described and contemplated by the 1st section of the ordinance of 1754, above recited.

In divers public acts the Lieutenant Governor is styled subdelegate, which, however, was not absolutely necessary, as the character of subdelegate was included in the title of Lieutenant Governor. This is sufficiently shown by the complete titles already mentioned, in which the supreme confirming authorities recognise the concession to have been made by the Lieutenant Governor (Teniente Gobernador de San Luis Ilinoa.)

Having thus demonstrated the power of the Lieutenant Governor to make original concessions, we proceed to show that the concession in question was protected by the treaty of cession, 30th April, 1803.

By the 3d article of the treaty, "the inhabitants of the ceded territory shall be incorporated in the Union of the United States, admitted to the enjoyment of all the rights of citizens, and, in the mean time, shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

The questions, therefore, with reference to this article, as regards the concession before the court, are—

1st. Did this concession, at the date of the treaty, vest a right in Antoine Soulard?

2d. Did this concession constitute property in the grantee?

If those questions be decided in the affirmative, the proposition is true, that the treaty protects the concession. From what has been shown, it is manifest that those questions must be so decided, because,

1st. The concession was made by the proper authority.

2d. At the moment it was made, it became the subject matter of sale, of distribution, of descent;

3d. The grantee might, at any time, have applied for a confirmation of it to the superior authority;

4th. The Lieutenant Governor, who made it, (nor his successors,) could not have rescinded, of his own mere motion, the grant so made. To do this, it was necessary that, by a formal decree, for cause shown, the land granted should be reunited to the domain, or should be abandoned or relinquished by the act of the grantee; neither of which, in this present case, appears to have been done.

If Mr. Soulard had died before the treaty of cession, this grant, and the land it included, would have devolved upon his widow and children; or if he had the power so to do, unfettered by any marriage or other contract, it would have followed the disposition of his last will and testament, if he had made one.

His widow, or heir, or devisee, might apply for confirmation, or might sell it before confirmation. It follows, therefore, that Mr. Soulard had a vested right in this concession, and a property as *real* and *defined* as any other that could be contemplated by the treaty of cession.

We shall now proceed to demonstrate the fifth position, namely, "that the concession and survey before the court might have been perfected into a complete title, conformably to the laws and usages of the Government under which the same originated."

In demonstrating this proposition, the petitioner might, it is believed, rely, with confidence, on what has been already shown, and call on the United States to rebut the *prima facie* case made.

It has been demonstrated,

1st. That the concession has been made to a subject of the King of Spain, during the existence of the government in Louisiana, and a resident of that province at the date of the concession;

2d. That the concession has been made by lawful and competent authority;

3d. That the concession and survey vested a right and a property in the grantee.

Upon these grounds, it is submitted, that, upon the ordinary principles of law and equity, a presumption arises in favor of the claim to confirmation, which should stand until the contrary be proven by the adverse party.

Between private litigants, this certainly cannot be denied; and we can see no reason why the United States, or those claiming under them, should not be bound by the same principles.

Where one private individual succeeds to the rights and liabilities of another, either as purchaser, heir, devisee, or personal representative, the contracts of the person under whom he claims, if legally made, are valid against him, and would, if necessary, be decreed to be specifically executed by a court of equity.

By the treaty of cession the United States became vested with all the rights, and subject to all the legal and equitable liabilities of the former Government, as related to the province of Louisiana; and this, it is contended, would have been the consequence of a mere cession, without any specific stipulation in favor of the rights and property of the Louisianians.

It follows, then, that the concessions made by the officers of the former Government, duly thereto authorized, are as obligatory on that Government, and on its successor and representative, the United States, as those private contracts above mentioned would be binding in a court of law or equity; and

that, to get rid of those concessions, it is necessary, not merely to reject them, but to show *some good cause of rejection*.

For, although it be true that the Spanish King might, without assigning a reason, have, in the plenitude of his power, cancelled this concession, it is eqnally true that the United States have not succeeded to this attribute of despotism, and that the only power vested in them, as regards the present question, is that which the treaty of cession and the Constitution of the United States have recognised or created.

But it would be, in truth, an injustice to the Government of Spain to suppose that any other than the principles relied on could have governed the confirmation or rejection of this concession. For, whatever might have been the tyranny exercised on political or religious questions, it is a known historical truth, that between the crown of Spain and the subject, as related to rights of property, the most equal justice was distributed; and in Louisiana in particular, the mildness and liberality of the Spanish rule was proverbial.

We therefore repeat, that, even before a Spanish Intendant General, we have made a case for confirmation which would stand until rebutted. We consider it important here to press upon the consideration of this court, that the claimant is not a petitioner to this tribunal for the grant of an *original right*, but merely for the recognition of a right *already existing*, and of a property of which the United States, on the 10th of March, 1804, found him in quiet possession. He petitions not for a grant of any part of the *public land*, but that he may be quieted in his ancient title to *his own* by a disclaimer on the part of the United States of a pretension totally unfounded.

The confirmation by the Spanish authority would have amounted to *no more;* for, as it has been demonstrated, the concession and survey gave an immediate right, and vested an estate in the grantee from the date and by the operation of the incomplete title; and therefore the Spanish confirming power would not by any means have granted, although it might have annulled a grant, and divested an estate already vested.

We will proceed, however, as far as is practicable, to show that in this case the Spanish confirming authority would not have annulled the concession or divested the estate created.

If the supreme Spanish authority would have refused to confirm this concession, it must necessarily have been upon one or more of the following grounds:

1st. For want of power in the officer who made the concession.

2d. For informality in the grant.

3d. For some disqualification in the grantee.

4th. For non-compliance on part of grantee with some condition expressed or implied in the grant; or,

5th, and lastly, for fraud or collusion in the obtaining of the concession.

On the first point, viz: the power of the granting officer, the arguments and facts already submitted might be deemed conclusive; but, inasmuch as none of the complete titles cited, and in which the power of the Lieut. Governor to grant is recognised, include so large a quantity as 10,000 arpens, (the amount of the present concession,) some observations will now be made to show that the power of the Lieut. Governor in Upper Louisiana was unlimited as to quantity.

To demonstrate this, we may again refer to the uniform usage and prac-

tice of the Lieut. Governors, from the year 1770 down to the date of the treaty of cession.

We have seen that the grant for a league square made previous to the year 1790, was confirmed to Gratiot and his heirs, by Gov. General Gayoso; that a grant of 8000 arpens, made 18th January, 1798, was confirmed by the Intendant General Morales to Louis Labeaume, the original grantee, on the 5th of June, 1802. Here is the usage recognised by the supreme authority in express terms, as far as 8000 arpens; and we cannot discover why the same recognition would not have been made if the grant to Labeaume had been for 10,000 arpens. The addition of two thousand arpens certainly impugns no principle on which the confirmation of 8000 arpens could have been grounded.

Besides this express recognition, we rely, also, on the tacit assent to the usage and practice of the Lieut. Governor by the superior authority at New Orleans. A great number of concessions were made by the different Lieut. Governors, exceeding 8000 arpens; and in no one instance has the superior authority disapproved, in any manner, the act of the subdelegate

It is not to be supposed that the Lieutenant Governors of Upper Louisiana would have dared to usurp a power which the law did not give them, or that, if they had so usurped it, the superior authority at New Orleans would have in silence assented to it.

The character of the individuals who have successively filled those high offices under the Spanish monarch, forbids this supposition. It would be absurd to suppose that the Lieut. Governor, without any motive of interest, would so act; and it would be calumnious to assert that any motive of self interest *did* impel him so to act.

When we look back upon the terms of the ordinance that has been cited, we will see that the power of the subdelegate was unlimited as to quantity, as far as related to Upper Louisiana, at all times and in every part of the province of Louisiana, until certain modifications were adopted by O'Reilly, Gayoso, and particularly by the Intendent General *Morales*, all of which, as will be hereafter shown, were applicable either to *new settlers*, or to the land in Lower Louisiana exclusively.

By the 1st section of the ordinance of 1754, already cited, it is decreed that the Viceroys and Presidents of the Royal Audiences shall thenceforward have the faculty of appointing the subdelegate ministers, "who are to make the sale and arrangements of the lands and uncultivated grounds belonging to the King." There is no limitation as to quantity whatever.

In looking back to the 5th article of the ordinance, we see that the Viceroys and Audiences are thereby directed to confirm when no "fraud or collusion exists, and on proof of payment when a price has been stipulated." Here is no limitation as to quantity.

By the 12th article, (the translation of which has been given in extenso,) by which the confirming power is vested in the Governor General. the acts or grants of the respective subdelegates are to be examined and confirmed "in the same way as is expressed" with respect to the Audiences.

It may be proper to observe, that the condition of payment of a price can be only applicable to the sales, or arrangements in the nature of sales; but that in the case of *mere donations* or *graces* (*mercedes*) no such condition could be deemed applicable, and nothing more could be exacted than the fees usually paid to the officers of the confirming tribunal.

The preamble to the ordinance of 1754, and the introductory decretal part,

show that the King, in the case of gifts (mercedes) as well as of sales, intended that the power of the subdelegates should be the same, and subject to the same control on the part of the confirming authority.

The extent of those gratuitous grants, rewards, or "mercedes," is not limited, and was left, as well as that of sales, to depend upon the discretion, under all circumstances of the case, of the granting power.

In the present case the circumstances are all in favor of the grant.

1st. The *fact* of the grant creates a presumption that the grantee deserved the favor.

2d. The fact of his being a meritorious officer, and that the grant was intended as a recompense for services rendered, is in proof before the court.

3d. At the time the grant was made he had already been a considerable time in the service, and had received no compensation or pay until that grant was made to him.

It seems, then, to be demonstrated, as far as the matter is susceptible of demonstration, that, taking into view the complete titles theretofore made, and the merits of the grantee in the present case, the confirmation of this concession would not have been refused by the Spanish Governor General or Intendent, merely on the ground that too great a quantity was included in it.

We come now to the second possible objection, viz: "informality in the grant."

On this head we shall merely refer to all the concessions, not only those which remain unconfirmed, but those on which complete titles have been granted by the Spanish Government, and confirmations made by the Congress of the United States. The concession under consideration was in the *same terms as those*, and clothed with the same formalities: if the one be good in point of form, the other must be equally so, and in that respect equally entitled to confirmation.

Here we shall notice an argument against the claim, which may be, perhaps, drawn from the supposed want, in this case, of registry of the concession, and shall meet the objection by either of the two following propositions.

1st. Registry was not necessary, under the Spanish or French Government in Upper Louisiana, to give validity to an original concession warrant, or order of survey.

2d. Supposing registry to have been necessary, such registry has been made in this case as was required, according to the usage and practice in Upper Louisiana.

On the first point we will observe, that, neither by the ordinance of 1754, or that of 1786, of the King of Spain, nor by any of the regulations of the Governors General or Intendents, is registry of an original concession, warrant, or order of survey, required. As far as regards written law, our position, therefore, is sustained.

We will admit that there did exist at St. Louis a book, called the *Livre Terrien*, in which, from the year 1766 down to the year 1797, a considerable number of concessions, orders of survey, and surveys, were entered by the respective Commandants and Lieut. Governors; but we deny that this book, or registry in it, was required by any law or ordinance, or that it gave validity to a concession, warrant, or order of survey. This book was used in some cases as the depository of the original and only grant, warrant, or order of survey, and in others was used as a mere record of the concession issued. In the latter case, the original document was delivered by the

granting officer to the *party interested*, who might, at his option, have the grant entered or copied into the "Livre Terrien." This, in point of fact, was very generally done during the first thirty years after the establishment of the post of St. Louis the seat of Government in Upper Louisiana. The practice, however, declined gradually after that period, and we find but one concession in the year 1796 entered on the Livre Terrien. This book remained in the custody of the Commandant or Lieut. Governor for the time being, until the appointment, by Gov. Gen. Baron de Carondelet, of Mr. Antoine Soulard (the claimant) as Surveyor General of Louisiana, in the month of February, 1795. Previous to his nomination, there was no surveyor of Upper Louisiana, appointed by the superior authority at New Orleans; and the few surveys theretofore made were executed by individuals authorized for the occasion by the Lieut. Governor, or employed and paid by the grantee or his representative. The surveys so made by them were generally registered in the "Livre Terrien;" and here we will remark, that a number of those surveys appear to have been made, not for the original grantee, but for his alienee or vendee—a conclusive proof that, even at that time, unlocated or floating titles were the subject matter of sale, and therefore had the effect of vesting a property.

The entry or registry of the concession was done at the request of the grantee, to protect him against the inconvenience which might result from the loss or destruction of the original concession, before any other record of its existence was made. Many grantees, however, neglected this precaution, and their concessions were not the less valid on that account. This is demonstrated by the complete titles which have been granted by the supreme authority at New Orleans, upon original concessions, made by the Lieut. Governors and Commandants, which have not been registered in the "Livre Terrien," or in any other record book in Upper Louisiana.

It is equally manifest, that, by no act of Congress has such registry been made necessary to the validity of a concession. Under the laws of 1807 and 1814, upwards of twenty claims of a league square each have been confirmed, none of which appear on the "Livre Terrien."

We have said that, in February, 1805, Mr. Antoine Soulard was appointed Surveyor General of Upper Louisiana. Soon after his appointment the practice of registry in the Livre Terrien ceased altogether, and another species of registry, created by the Surveyor General, was made use of. When Mr. Soulard was named surveyor, he found it necessary to organize his office, and adopt such a system as appeared to him most suitable to the duties which he had to perform, and to the interests and circumstances of the inhabitants. He had received no other directions from the supreme authority at New Orleans than those contained in his commission of Surveyor General, which is expressed in very general terms, and defines not at all his functions, or the mode in which he is to organize his department or keep its records. Being thus at liberty to adopt any plan which to him might appear the most suitable, he discontinued the registry of concessions and surveys in the "Livre Terrien," and, instead thereof, entered each survey made by him or his subordinate officers in a book kept by him for that express purpose.

In this register was entered—

1st. The plat of survey;

2d. The date of the execution of the survey, and (in general) the name of the person who surveyed;

3d. The date of the warrant, order, or concession, and name of the Commandant or Lieut. Governor who made it;

4th. The date of the certificate of survey issued by the Surveyor General to the person for whom the survey was executed.

This was the uniform practice in every case where a survey was made in pursuance of a superior order, down to the time when Mr. Soulard ceased to be surveyor, and delivered up the above register and papers of his office, including the Livre Terrien, to the Board of Commissioners. The receipt given to Mr. Soulard for these books and papers bears date the 10th July, 1806, and is signed by the clerk of the Board of Commissioners, J. V. Garnier.

In pursuance of the act of Congress of the 29th February, 1806, sec. 2, all the plots of surveys, and all other papers and documents pertaining to the office of Surveyor General under the Spanish Government, were delivered to the principal deputy Surveyor of the United States; and by the above act it was provided that no plot of survey should be admitted as evidence in any court of justice unless certified by the said principal deputy to be a true copy of the record in his office.

Thus the registry kept by Mr. Soulard has become part of the public records of the United States, and its authenticity expressly declared and recognised by the above act of Congress.

The same sanction has been given by other acts of Congress. Most of the confirmations made under the law of 12th April, 1814, are based upon surveys made previous to the 10th March, 1804, and entered by the Surveyor General (Soulard) in the above register. Indeed, in no case of confirmation under the act of 1814 does the original concession appear to have been registered, either in the Livre Terrien, on in any other book of record under the Spanish Government.

Enough, it is hoped, has been now said to demonstrate the first proposition—namely, that registry was not necessary to the validity of an original concession.

To sustain the second position, viz: "that, supposing registry to have been necessary to give validity to the concession before the court, such registry has been proved," it is only necessary to refer to what has been already stated.

The Surveyor General in this case followed the practice adopted by him in every other. Being *himself* the grantee he kept, as he had a right to do, his concession among his other title deeds, until he found it convenient to have it located and surveyed. When the survey was made by the proper officer, Mr. Soulard entered it in his registry in the same way, and with the same particularity, that was observed in every other entry made by him.

By the certified copy from the registry, made evidence by the act of Congress before cited, it appears that the land included in the grant was surveyed in February, 1804, by Santiago Rankin, Lieutenant (or deputy) Surveyor, by virtue of a decree of concession of the Lieut. Gov. Zenon Trudeau for 10,000 arpens, dated the 20th April, 1796, and that the certificate of survey was made and dated on the 8th March, 1804, which was also the date of the entry in the registry.

This survey was made, as has been proved, by a respectable witness, about the time that other surveys were made by the same deputy (Santiago

Rankin,) which surveys were registered in the same book and in the same form.

Many of those tracts so surveyed by Santiago Rankin, under the acts of Congress of 1807 and 1814, amongst them a tract of 15000 arpens, 7056 of which have been confirmed by the Recorder. All this has been shown in evidence, and, it is submitted, removes all doubt as to the operation in favor of the present claimant of the survey made for him by the deputy Santiago Rankin.

Thus, then, if registry be required as an essential ingredient in the present case, this registry has been made—the only one that by any law of Congress, or any Spanish law, usage, or practice, has ever been required.

The loss of the certificate of survey in this case cannot affect the question, inasmuch as the entry in the registry contains every thing expressed in a certificate, as will appear by an examination of certificates existing, and a comparison with the corresponding matter on the record.

The third possible ground of rejection, namely, "disqualification in the grantee," manifestly does not exist; on the contrary, as has been observed, his quality as an officer of the Spanish Government must now create a presumption of his merits. Besides, he was a resident of Louisiana when the grant was made to him, and therefore corresponds with the description in the law of Congress (under which this court sits) of a competent grantee.

The fourth ground of possible objection, namely, the non-compliance with some condition in the concession, is equally wanting. There is in fact no condition, unless that which attended every grant from the King of Spain, namely, that of conforming to the "Reglamento del Asunto," or, in other words, paying the taxes to which the property might by law be subjected, and performing the duties imposed on the proprietors of lands in Louisiana, according to the circumstances and localities of the land granted.

As to the fifth and last possible ground of objection, viz: fraud in the concession, enough has been said to demonstrate the non-existence of it, if, in any case, such proof were necessary. Fraud, however, is to be *proved*, not *presumed;* and if the United States rely on it as a ground of rejection, they are bound to show it. It is assumed with perfect confidence, in this case, that such proof is impossible.

Now to the sixth general proposition which we undertook to establish, viz: "that this concession is protected by the law of nations." On this point, after what has been already urged, it must be quite unnecessary to expatiate. In a country conquered by force of arms, the law of nations protects private property. For the correctness of this doctrine, Vattel and Blackstone are referred to as being familiar to our recollection; but it is believed that every writer on international or even municipal law may be cited in support of it. How much stronger is the claim to protection in the present case, where the sovereignty of the United States over Louisiana was the result of a voluntary compact—of a solemn treaty, which guarantied to the inhabitants of Louisiana, not merely their property, but assured to them and their children all the advantages of American citizens? This court, therefore, may well ground the confirmation on the law of nations, which, in truth, includes all the other grounds of confirmation mentioned in the acts of Congress.

The seventh and last proposition, viz: "that this grant is protected by the acts of Congress heretofore passed on the subject of such titles," can, it is believed, be sustained by a reference to those acts.

The first act passed by Congress, of the 26th of March, 1804, while it outrages principle in declaring to be null and void all grants subsequent in date to the treaty of St. Ildefonso, by a proviso saves and respects every bona fide grant within a mile square to an actual settler, even subsequent to the date of that treaty. The silence of this act as to the bona fide grants made previous to the above date, it is submitted, may be well construed into a recognition of them; for certainly, if the framers of that extraordinary law did not consider those grants good and valid as against the United States, they would have declared them to be null and void in the same compendious style in which they attempted to despatch the others. If this tacit recognition be admitted, it must be without limitation as to quantity.

By the 1st section of the act of 2d March, 1805, the validity of every duly registered warrant or order of survey, made previous to the 1st October, 1800, (the date of the treaty of St. Ildefonso,) *without any limitation as to quantity*, provided the lands granted were inhabited and cultivated by the grantee, or some person for his use, on that day, is acknowledged as if a complete title had been vested in the grantee.

By the 3d section of the act of 3d March, 1807, the commissioners were invested with powers to decide according to laws and usages of the French and Spanish Governments upon all concessions where the claim was made by any person or persons, or the representative of any person or persons, who were, on the 20th of December, inhabitants of Louisiana, and to confirm the same within a league square, unless a salt spring or lead mine was included, and which confirmation was to be final against the United States.

It is contended that the above two acts of 1805 and 1807 have established a principle which protects every bona fide grant. Those acts cannot be construed to have conferred any original title on the claimant. They are by no means donative. They only recognise a pre-existing right in the claimant, and upon that ground confirm it. In the law of 1805, every duly registered warrant or order of survey, as therein described, is recognised as valid. In the law of 1807, every concession made according to law and usage, to the extent of a league square, is confirmed. These laws, while they so recognise the concessions and warrants, do not declare that in the one case want of possession shall annul a warrant, or in the other that the concession beyond a league square is null and void, or that it is void because a salt spring or lead mine is included in it; on the contrary, they recognise the warrants and concessions in the abstract, and give effect to them as complete titles, upon certain conditions in the one case, and without any condition but within a limited extent in the other, provided no salt spring or lead mine be included. (Here may be cited Francois Tayon's claim of 10,000 arpens, 7,056 arpens of which are confirmed, and various others; also a tract of 15,000 arpens granted to M. P. Leduc, already mentioned in page 21.)

By the same act of 1807, those concessions which are not confirmed, or are only in part confirmed, are reserved for future decision, as appears by the 7th section of that act, which directs the commissioners to report and to classify them as therein mentioned.

It is manifest, therefore—

1st. That, if the present concession had been before the board, it ought to have been confirmed under the act of 1807, within a league square;

2d. That the principle established by said act, and by that of 1805, protects it in its whole extent of 10,000 arpens.

The act of 12th April, 1814, would still more clearly confirm this claim within a league square, if it had been submitted to the recorder, and was included in the report of the commissioners; because—

1st. It is an incomplete grant made prior to the 10th of March, 1804, for lands lying within the territory of Missouri, to a person at that date a resident in Louisiana;

2d. It was actually located and surveyed within the territory of Missouri, before the 10th March, 1804.

It is submitted, also, that the above act furnishes, as well as the acts before referred to, a principle which recognises the legality of the concession in its whole extent.

In conclusion of our observations in support of the seventh proposition, we can safely assert that the present claim or concession, in its terms and circumstances, is either exactly similar to, or exceeds in point of merit, the greater number of those which have been confirmed by the board of commissioners and the recorder, under the laws above referred to; and it is therefore to be inferred, that, if the claim had been submitted to either of these tribunals, it would, equally with the rest, have been confirmed.

Having thus endeavored to demonstrate that the claim before the court possesses all the ingredients, and fulfils all the conditions, which, in the contemplation of the act of Congress, entitle it to confirmation, we should here conclude our argument, did we not consider it proper to advert to certain regulations concerning the granting of lands in Louisiana, made by the Governors General O'Reilly and Gayoso, and the Intendant General Morales.

To those regulations have been ascribed a bearing and effect on the Missouri land claims, to which a very slight examination will prove that they are not at all entitled. Indeed, taking into view the terms of the act under which this court adjudicates, it may well be contended that those regulations are excluded altogether from its consideration. By this act, in its first section, the *laws*, *usages*, and *customs*—in its 2d section, the *laws* and *ordinances* of the Government "from which the claim is alleged to be derived," are to be the rule of decision. Now we respectfully contend that the regulations of those officers above mentioned are neither usages, laws, or ordinances, but merely temporary and local regulations, not in any respect binding on the successor of the person who made them, and by that person only occasionally enforced or regarded.

To ascertain the distinction between these regulations and a law or ordinance, we can refer to Morales himself. In the preamble to his famous regulation of the 17th July, 1799, (a copy of which, in the original Spanish and French, is ready to be produced to the court,) he refers to the laws and ordinances of the King, and immediately after to the *regulations* of O'Reilly and of Gayoso, which regulations, he observes, he has examined with attention. He mentions the *laws* and *ordinances* as absolutely binding on him, while he speaks of the *regulations* of the Governors General as merely entitled to his attention.

Besides this construction of Morales, we rely upon the known and exclusive meaning of the words laws and ordinances (leyes y ordenanzas) in the Spanish code, and under the Spanish Government, and we therefore suppose that those words were used in the *Spanish* acceptation by the Congress of the United States.

But supposing those regulations (particularly those of Morales) to be either laws, ordinances, or simply *regulations having the force of law*, we sub-

mit that, to show their applicability to Upper Louisiana, it must appear that they were published or promulgated in that province. This has not been, nor can be done; for the proof exists to the contrary. We have proved by living witnesses of the first respectability, that the regulations of Morales, so far from having been promulgated, were sent back by the Lieutenant Governor to Morales, with a remonstrance and various written objections to their operation, and that the Intendant never replied to those objections, or insisted on enforcing his regulations in Upper Louisiana. And here it may be remarked, as a proof that the regulations of Morales were not known as law in Upper Louisiana at the date of the cession, that, among the laws and regulations of the Spanish Government, furnished to the commissioners by the Government of the United States, the regulations of Morales were never included, nor ever noticed at all by those commissioners.

But supposing those regulations were to have been promulgated in Upper Louisiana, a very slight inspection will show that they cannot affect the present claim.

The regulations of O'Reilly, the first Spanish Governor of Louisiana, bear date the 18th February, 1770; at that date the settlement of Upper Louisiana had hardly commenced. It was in the year 1765 that the first cabin was built in St. Louis. The population of Upper Louisiana was then too thin to be the object of such complex regulations, or almost of organized government. Besides, the regulations of O'Reilly, which consist of twelve articles, are, the greater number, specifically restricted in operation to the island of Orleans, Opelousas, Attakapas, and Natchitoches; no mention whatever is made in them of Upper Louisiana. These regulations are noticed in Stoddard's excellent work on Louisiana. In page 252, Stoddard observes, that "the regulations of O'Reilly were totally inapplicable to that part of the country, and the Spanish authorities there always conceded land on principles not derived from them." Here we will observe, that the authority of Stoddard has been acknowledged by the most enlightened men as deserving of respect; and, as a record of sound opinion and historic fact, we feel justified in calling the attention of the court to his work on Louisiana.

The regulations of Gayoso are equally inapplicable, in a great many of their provisions, to Upper Louisiana, and, in those which are applicable, are intended to be in force only as to new settlers.

Those instructions are specifically styled by their author, "Instructions to be observed by commandants of posts in this province, for the admission of *new* settlers."

The instructions, translated into English, are to be found in the Appendix to the Land Laws, page 21, No. 13; also, in Geyer's Digest, page 438.

To show that the regulations of Gayoso are inapplicable, we shall refer to his own decision as conclusive.

In a former part of this argument, we adduced, in proof of the authority of the Lieutenant Governor to make the concession now under discussion, a complete title made by Gayoso on an original concession by Zenon Trudeau, dated 19th November, 1796, to one Regis Loisel, for 1480 arpens. In the requete or petition upon which this grant is made, Regis Loisel styles himself "a trader of this town," (negociant de cette ville,) of St. Louis.

Now, the 11th article of those regulations directs that "no lands shall be granted *to traders:* as they live in towns, they do not want them." [Vide said regulations, as above.]

This authority, it is presumed, precludes the necessity of any farther re-

mark on the subject of Gayoso's regulations. We shall therefore proceed to consider those of Morales, which, in fact, are those upon which the stress has been laid in recent discussion on the subject of Spanish land claims.

In the first place, it is to be observed, that, in the preamble to his regulations, which are dated 17th July, 1799, he declares his intention to conform, in the execution of the duties imposed on him, (by the royal order of the 22d October, 1798,) to the 81st article of the ordinance of the Intendants of New Spain, the regulations of the year 1754, cited in the said article, and the laws respecting it.

The ordinance relative to the Intendants of New Spain was published in 1786, and invested them with the power of selling and distributing the royal lands, "acting in those affairs, as also their subdelegates and others, in conformity with the royal instructions of the 15th October, 1754." (This ordinance, in the original Spanish, and translated into English, is ready to be produced to the court.)

It will be recollected that, by the 12th article, before cited, of the ordinance of 1754, which became applicable, and was declared by royal order (as recited in the preamble to Morales' regulations) of the 24th August, 1770, to be applicable to Louisiana, the power of granting complete titles to lands was vested in the Gov. General, who was bound to conform to the general directions of the ordinance of 1754.

This power was accordingly exercised by the Governors General of Louisiana, (being the same exercised since 1786 in *New Spain* by the Intendants) down to the 22d October, 1798, when it was given to the Intendant General Morales.

It follows, therefore, that no greater power was vested in Morales than the Intendants of New Spain possessed, who themselves were bound by the ordinance of 1754.

It is evident from this that no construction should be given, if any other can consist with their terms, to the regulations of Morales, which is inconsistent with the above ordinance.

Keeping this rule in our eye, we shall pass in rapid review those regulations.

It is only necessary to read the 1st, 3d, 4th, 8th, 9th, 10th, 11th, 12th, 13th, 15th, 16th, 34th, 35th, 36th, being 14 out of 28 articles, to be convinced that they never were intended to apply to Louisiana. The local circumstances to which they refer did not exist in that province; and provisions on the subject of applying for titles *within the time therein mentioned* would be absurd, and, as the means of communication with New Orleans then existed, physically impracticable.

In a recent publication, signed *Jno. B. C. Lucas*, which appeared in the Enquirer newspaper of the 30th of August last, the writer appears to be of opinion that the 15th article of those regulations deprived the Lieut. Governor of the power of making original concessions. He observes that "he never has been able to see the letter of office or document from the Intendant, authorizing the commandants of posts to issue concessions; on the contrary, the 15th article of the regulations of the Intendant provides that 'all concessions shall be given in the name of the King by the Intendant General of this province, who shall order the surveyor general, or one particularly named by him, to make the survey, &c." He then says, "that the 2d article of the same regulations specifies, that 'if in the posts the commandants shall state that the land asked for is vacant and belongs to the domain, and

that the petitioner has obtained permission of the Government to establish himself'—and declares himself perfectly at a loss to know how it comes that the commandants of posts have presumed to issue concessions as subdelegates of the Intendant, when that power is lodged, by the ordinance of St. Lorenzo, solely and exclusively in the Intendant, when he declares expressly that he retains it."

Now it is evident, from the above observations, that Mr. Lucas had totally lost sight, when he wrote them, or was not aware of the ordinance of 1754, and that relating to the Intendants of New Spain, of 1786, before observed on. If he had ever read those ordinances, he would have known that "no letter of office or document from the Intendant" was necessary to authorize the Lieut. Governors of Upper Louisiana to issue concessions. On the contrary, he would have known that the Intendant had no power to deprive the Lieut. Governors of the faculty, if even he the Intendant wished so to do. The power of making those original concessions or warrants of survey was vested, at least since the year 1700, in the subdelegates, as appears by the 5th article of the ordinance of 1754, which confirms all titles *originated by them* from that date. By the same ordinance, the power of originating titles is, in express terms, continued to the subdelegates (ministros subdelegados.) The Lieut. Governor of Upper Louisiana was, virtute officii, *subdelegate*, and derived his power, when *once appointed*, not from any specific permission or authority given by the Gov. General or Intendant, but from the royal ordinances which regulated and defined his functions.

It is evident, therefore, that this 15th article must, consistently with the ordinance of 1754, either refer to New Orleans alone and Lower Louisiana, if it means, by concessions, original grants, or, what is the more rational construction, it must refer exclusively to complete titles, in which case it very nearly conforms to the ordinance of 1754 and that of 1786.

To explain the meaning of Morales in the 2d regulation, it may be observed that commandants of posts were not necessarily subdelegates, and that this latter quality alone entitled them to issue concessions. In Upper Louisiana, for instance, the commandant of the post of St. Andre was not a subdelegate; and he, therefore, could only report that the land asked for was vacant, and that the demandant was such a person as he represented himself to be, upon which report the Lieut. Governor, as *subdelegate*, *originated* the title, or, in other words, made the concession, which in due course was to be confirmed at New Orleans. "The commandants of posts," therefore, mentioned in the 2d regulation, and upon which Mr. Lucas relies, must mean commandants *simply*, and not subdelegates. In this way Morales is consistent with the ordinances, and in no other.

It may be proper to observe, that, from the situation which Mr. Lucas held as commissioner, and the fact that he is now an adverse party to one of the petitions filed in this court, his publications and objections have been deemed worthy of notice. The subject is novel, somewhat involved, and it was feared that plausible objections, coming from such a quarter, might meet with more attention and respect than, when thoroughly examined, they deserve.

The other articles of those regulations appear to have been framed for the sole purpose of drawing money into the coffers of the Government, or rather of its officers at New Orleans, and are manifestly in opposition to the spirit and principle upon which the government of Upper Louisiana was theretofore administered. The object of the Governors General had been

(particularly from the commencement of the administration of the Baron de Carondelet) to facilitate the colonization of Upper Louisiana. For that purpose the greatest encouragement was held out to settlers, and lands were granted to them upon terms the least onerous and expensive possible; the original concession was made, it is believed, without any charge for fees of office or of any other description.

Sales of land by the Government of Spain were unknown in Upper Louisiana, and the grants made were universally either as recompences for services, or gifts, (mercedes,) or in consideration of and to encourage agricultural or other industry. It is not, therefore, to be wondered at that those regulations were objected to by the Lieut. Governor of Upper Louisiana, or protested against by the Cabildo at New Orleans.

But supposing, for a moment, that those complex and oppressive regulations were seriously intended by Morales to be enforced, it by no means follows that his intentions are binding on this tribunal. If it be manifest that, *at any point of time subsequent* to the date of the concession, the Spanish Government would have confirmed the grant without loading its confirmation with the charges and formalities invented by Morales, this court is bound now to decree confirmation in the same liberal spirit.

Indeed, when we examine the 18th, 19th, 20th, 21st, and 22d articles of the regulations of Morales, it is manifest that, giving to them at this date the most plenary operation, the claimant would be entitled to a complete title on the ground of *compromise* to be made, with reference to the circumstances of the case. The circumstances, it will be admitted, are all in favor of the claimant. The expenses to which he has been subjected—the deprivation of rights which he has sustained—the delay of justice—the many years that have elapsed since that treaty was made which ought, if it had been observed, at once to have given to the inhabitants of Louisiana the substantial enjoyment of their property, so solemnly guarantied to them by its third article—all those circumstances, even upon the ground of compromise, to which even Morales' regulations entitle them, it is repeated, bring the claimants within the protection of the act under which this court is to adjudicate.

It is supposed that there can be no great necessity for demonstrating that the regulations of Morales, supposing them to have any value, can be only *prospective* in their operation, and that they cannot impair the validity of any incomplete title or concession made previous to their date.

To remove all doubt on this point, we shall here refer to the authority of Morales himself, as we have already done in a former part of the argument to demonstrate his recognition of the power of the Lieut. Governor to grant.

We, therefore, call back the attention of the court to the three complete titles made by Morales before cited:

The 1st for 900 arpens, on a concession by Zenon Trudeau.

2d, for 1042 arpens, on a concession by same.

3d, for 8000 arpens, on a concession by same.

The first two dated 28th April, 1802, the 3d dated 5th June, 1802.

The language used by Morales in those complete titles is conclusive to show that he never intended their operation to be retrospective. He says, that the grantee "having complied with all the formalities and obligations required, inasmuch as this concession is anterior in date to the last regulation published by this Intendency," prays for a corresponding complete title, (Habiendo cumplido con las formalidades, y obligaciones prevenidos por *ser*

esta concesion anterior a las ultimas disposiciones del reglamento publicado por esta Intendencia.) The "last regulations" meant by Morales are those upon which we have been observing; none other, it is believed, have ever been published by him.

With this decision of Morales, we shall close our remarks on his regulations.

In the argument above submitted, we have relied on laws and usages, which, in an ordinary court of justice, deciding on the narrowest grounds, would, we conceive, entitle the claimant to a decree in his favor.

But we, with great respect, submit that this court has a duty to perform which transcends the limits of ordinary jurisdiction—the high duty of expounding and giving operation to international compacts and solemn treaties.

We have already spoken of the treaty of cession of 1803, but we conceive that not only this treaty, but those of 1762 and 1800, between France and Spain, are important to be considered.

The treaty of 1762, by which Louisiana was ceded by France to Spain, has never been published. The character of this treaty, and circumstances attending it, are, however, matter of history. It was a species of family compact, which, though it may have answered the purposes of the monarch who transferred his vassals, did by no means please the inhabitants of Louisiana. This was felt by the King of France, and every thing was done, on his part, that could reconcile his subjects to the new yoke to which they were compelled to submit.

The letter of the king of France to M. D'Abadie, Director General and Commandant for his Majesty in Louisiana, demonstrates this, and may well be considered a publication of that part of the treaty of Fontainebleau which immediately concerned the inhabitants of Louisiana, and those rights and interests which, by the operation of the treaty, might have been endangered or affected.

This letter bears date at Versailles, April 21st, 1764, and was published at New Orleans in October of the same year. In this letter the King assures the inhabitants "that all the grants made by the Governors and Directors of the colony shall be holden and taken as confirmed by his Catholic Majesty, even though not yet confirmed by him." (Vide Appendix to Land Laws of the U. S. page 8, No. 2.)

The assurance thus given has been religiously observed by the Spanish authorities in Louisiana, who, no doubt, considered it as a part of the treaty, and equally binding on the conscience and honor of the Spanish monarch.

The observations we have offered on the treaty of Fontainebleau are applicable to that of St. Ildefonso: the same ungracious transfer—the same unceremonious conveyance of territory and people—and therefore the same causes of disgust and mortification to the inhabitants of Louisiana.

The Spanish Government in that province had effectually succeeded in effacing all trace of attachment to the ancient French connexion. The mildness and justice of the Spanish rule had entirely reconciled the inhabitants to the domination of Spain, and made them look with the same disgust and apprehension to the retrocession to France as they had felt forty years before for their transfer by France to Spain.

Besides, the population of Louisiana had in that interval been in a great measure recomposed.

In 1762, it was universally French in birth, language, and habits; in 1800, it was comparatively Spanish.

Encouraged by the advantages held out by Spain, a multitude of Spanish subjects, of either hemisphere, flocked to Louisiana. The public offices were filled by them, and a great portion of the property had passed into their possession. They, therefore, viewed with all the prejudices of Spaniards the retrocession to France; and naturally preferred the mild sway of the Spanish monarch to what they deemed the military despotism of Napoleon Bonaparte.

This, as in 1763, was foreseen by the contracting parties, and every effort was made to reconcile the people of Louisiana to their new master.

In this point of view, the proclamation of Salcedo and Casa Calvo (commissioners of the King of Spain for the delivery of the colony to the French authorities) is analogous to the letter of Louis XV to D'Abadie. It had a similar object, and was couched in nearly the same language.

This proclamation (as has been proved in this case) was published with all due solemnity to New Orleans and St. Louis, and was sent to all the commandants of posts in Upper and Lower Louisiana, to be by them communicated to the inhabitants.

The commissioners, in this proclamation, in the same terms used by Louis in his letter to M. D'Abadie, assure the people of Louisiana that *all their concessions shall remain good and valid—even those not confirmed by the King of Spain.*

This proclamation, having been tacitly assented to by the French Government, must be taken as an authorized interpretation of the treaty of St. Ildefonso. If, then, Spain felt herself bound by the letter of Louis to his representative, and France assented to the proclamation of the Spanish commissioners, it seems to follow that the United States, who have succeeded the French Republic in Louisiana, are bound to respect the Spanish guaranty, and to adopt the construction which has been given to the treaty of St. Ildefonso by the Governments who were parties to it.

Inasmuch as the proclamation of Salcedo and Casa Calvo was a public and official act, the United States must be deemed to have had full and timely knowledge of it, and might have protested against it. This was not done, and, consequently, the inhabitants of Louisiana were justified in supposing that the objection, which the proclamation created, devolved on the United States, when the sovereignty of the country became vested in them.

It would now, therefore, be a breach of faith to declare this assurance to be a nullity. All those inhabitants of Louisiana, who, relying on the protection of the treaty of St. Ildefonso, as proclaimed by the royal commissioners, *elected* to become American citizens, would be the victims of this prefidious doctrine. Many of those inhabitants were meritorious servants of the Spanish crown, and had an undoubted right to its future protection. This right, of course, became forfeited by the transfer of their allegiance to the United States, and there then remained to them no other fruit of their allegiance to Spain than the grants already made to them by that Government, and which they were justified in supposing were virtually confirmed by the treaty under which they became American citizens.

It is to be regretted that this reliance on the faith of treaties has not been confirmed by the event. Already twenty years have elapsed, and grants made for services rendered are still unconfirmed. A confirmation at this day cannot repair the mischief and injustice of this long delay; for what can compensate twenty years of human existence wasted in disappointed hope

and galling penury? The decree may restore to the injured claimant the possession of his lawful property, but it can do no more.

As an additional argument in favor of a liberal construction of titles such as the present, we rely also on the peculiar nature of the present law, and all the former laws of Congress on the same subject. The character of all of them is essentially *remedial.* When, therefore, in any of those laws, a principle of protection is conceded by Congress, it is submitted that the claimant in this court is entitled to the benefit of that principle. In no other rational sense can the provision in the present act be understood, which authorizes the court to frame its decree as well with reference to those laws as to any other law or usage.

It has been contended at the bar on behalf of the United States, that a penal or disqualifying effect should be given to certain of those acts of Congress. This position it has been the duty of the counsel for the claimant to refute in argument, and is here noticed only on account of its self evident error.

In this note of our argument we have omitted a variety of auxiliary topics dwelt an at the bar. This omission will not, however, affect our general reasoning: our object has been to give a concise analysis, rather than a full report of what we have spoken. We are not at present aware, that, in our anxiety to be brief, we have overlooked any part of the question. If, however, some link of argument should still be wanting, we pray that the defect may be pointed out, and we shall endeavor to amend it.

L. E. LAWLESS,
Counsel for Petitioner.

APPENDIX.

Proclamation of the Commissioners of the King of Spain to the people of Louisiana, on the Cession of that Province to the French Republic.

Don Manuel de Salcedo, Brigadier of the Royal Armies, Governor, civil and military, of the provinces of Louisiana and Western Florida, Inspector of the troops and militia thereof, Vice-Patron Royal, Judge, Subdelegate of the General Intendency of ——, &c., and Don Sebastien Calvo de la puerra y o Farrill, Marquis of Casa Calvo, Knight of the Order of St. James, Brigadier of the Royal Armies, and Colonel of the Regiment of Infantry of Louisiana—commissioned by His Majesty for the delivery of this province to the French Republic:

Make known to all the vassals of our lord the King, of whatever class or condition they may be, that his Majesty has resolved that the retrocession of Louisiana should be made to the reciprocal satisfaction of each power; and, that the same proofs of protection and love which the inhabitants of this province have experienced should be continued, His Majesty, amongst other things, has been pleased to determine certain points, which we believe our duty to cause to be published for the knowledge and disposition of all interested.

First. His Majesty having, under his eyes the obligations imposed by the treaties, and being desirous to avoid all dispute which migh unexpectedly arise, has resolved that the retrocession of the colony and island of Orleans which is to be made to the General of Division, Victor, or other officers lawfully authorized by the Government of the French Republic, take place in the

same form as that in which France has ceded it to His Majesty. In virtue of which the limits of the border of the Mississippi or river St. Louis shall remain as they were fixed by the 7th article of the definitive treaty of peace, concluded in Paris, the 10th of February, 1762; and consequently the settlements of the river Manshack, or Iberville, as far as the line which separates the American territory from the King's domain, shall remain under the power of Spain, and annexed to the Western Florida.

Second. All individuals who have been in the employ of His Majesty, and who will remain under the domination of the King, will go to the place of Havana, or any other places belonging to His Majesty, unless they should prefer to remain in the service of France, which they may freely do; but should any just and well founded reasons hinder them for the present to comply with this disposition, they may state them through their respective chiefs, to be decided upon accordingly.

Third. The benevolence of His Majesty will not discontinue the pensions granted to the widows, and those who have retired from the service, and will acquaint them in what manner they may receive their pensions.

Fourth. His Majesty makes known, that, by the wishes he entertains for the advantage and peace of the inhabitants of the colony, he expects, from the sincere and close amity and alliance which unites the Spanish Government to that of the Republic, that the latter will give orders to the Governors and other officers employed in its service in the said colony and city of New Orleans, to the end that the churches and other houses of religious worship, served by the curates and missionaries, should continue on the same footing, and enjoy the same privileges, prerogatives, and immunities, which were granted to them by the titles of their establishments—that the ordinary judges continue, equally as the tribunals established, to administer justice according to the laws and customs adopted in the colony—that the inhabitants should be maintained and preserved in the peaceable possession of their property—that *all concessions or property of any kind soever, given by the Governors of these provinces, be confirmed, although it had not even been done by His Majesty;* hoping, also, that the Government of the Republic will give to its new subjects the same proofs of love and protection which they have had under the government of His Majesty.

Fifthly. In order that all parties interested may take the resolution which they will judge the most conducive to their interest and welfare, we also make known, that, in case of doubt, they may have recourse and apply to any of us, for more ample information and knowledge, according to the rules and instructions which we have received.

And, that it may come to public knowledge, we do ordain that the same be published with all the solemnity required, at the sound of military drum, and posted up in the ordinary places. Given at New Orleans, May 18, 1803.

MANUEL DE SALCEDO.
LE MARQUIS DE CASA CALVO.

By order of their Lordships,

Charles Ximenes,
Secretary of War.

Copy,

Andre Lopez Armesto.

By order of their Lordships the Commissaries, I have commanded the publication at the sound of the drum in this post of St. Louis.

CHARLES DEHAULT DELASSUS.

The Baron de Carondelet, Knight of the Order of the Religion of St. John, Brigadier of the Royal Armies, Governor, Vice-Patron of the Provinces of Louisiana, Western Florida, and Inspector of the troops thereof, &c.

In order to obviate the many and various difficulties which have happened between the inhabitants of the posts and settlements of Illinois, relative to the boundaries of their lands, the greatest part not yet surveyed for want of an experienced surveyor, and that to avoid disorder, confusion, irregularities, and litigations and law suits which may in future take place; being myself informed of the capacity and talents of the captain of the militia of the post of St. Louis, Don Anthony Soulard, I have named him, and by these presents I name and appoint him surveyor of all the districts of Illinois and New Madrid, so that, conforming himself to the instructions of the surveyor general, the Lieutenant of the armies, Don Charles Laveau, with whom he is to correspond directly, he will measure, survey, establish boundaries, and mark the lands which will be conceded by this General Government, taking his lawful and accustomary fees. I command all the respective commandants, and the Lieutenant Governor of the establishment of Illinois, to render him, and cause to be rendered to him, the honors, rights, and privileges which belong and appertain to such surveyor.

Given the present, signed with my hand, sealed with the seal of my arms, and countersigned by the undersigned Secretary of this Government General for His Majesty.

New Orleans, February 3d, 1795.

EL BARON DE CARONDELET.

ANDRES LOPEZ ARMESTO.

I have received the statement of the artillery, stores, and effects belonging and appertaining to His Majesty, which you have brought away in the boats of the expedition for the evacuation of the domain of Upper Louisiana, and which, agreeably to my orders, were disembarked at Baton Rouge. I have likewise in my possession the inventory of the papers relating to the inhabitants, and other documents and correspondence of the Government mentioned in your official letter.

I have likewise been informed of the steps which you have taken to procure the artillery of the fort of Carondelet, in the Osage nation, and which you could not take down, leaving it with the hopes that Don Auguste Chouteau will attend to it, who has undertaken to deliver it at Baton Rouge.

In acknowledging the receipt of your official letter, I cannot do less than to manifest to you, sir, the satisfaction which I feel in observing the particular zeal and love for the service which has distinguished your command in the posts of Upper Louisiana, in which you have in so distinguished a manner interested yourself in the welfare of the inhabitants. God preserve you, sir, many years. New Orleans, May 30th, 1805.

EL MARQUES DE CASA CALVO.

To Sor. Don CHARLES DEHAULT DELASSUS.

Official letter of C. D Delassus, Lieutenant Governor of Upper Louisiana, to Antoine Soulard, Surveyor General of that Province, dated 18th May, 1808.

[Translated from the original Spanish.]

By letter dated 1st December of the last year, Don Juan Ventura Morales, Intendant General of these Provinces, tells me as follows:

"On account of the death of the assessor of this Intendency, and there not being in the province a learned man who can supply his place, I have closed the tribunals of affairs and causes relating to grants and compositions of royal lands, as the 81st article of the royal ordinance for the Intendants of New Spain provides that, for conducting that tribunal and substantiating its acts, the concurrence of that officer shall be necessary. I make this communication in order that, apprised of this providence, you may not receive, frame, or transmit memorials soliciting lands until further orders."

I transmit you the above for your information, and you may communicate it to those inhabitants whose concessions have been surveyed, and who would solicit their title in form from the Intendency, to the end that they will await the further order above mentioned. In the mean time, I understand that they shall continue in secure possession of the said lands.

God preserve, &c. At St. Louis of Illinois, 18th May, 1803.

CARLOS DEHAULT DELASSUS.

To Don Antonio Soulard.

Official letter of the Intendant General of Louisiana, Juan Ventura Morales, dated 17th July, 1799, *on the subject of his regulations (of same date) concerning the granting of lands, addressed to Charles Dehault Delassus, Lieutenant Governor of Upper Louisiana.*

[Translated from the original Spanish.]

For the government of this subdelegation, and the information of the inhabitants of the district, and the other persons concerned in the distribution and grant of lands and royal domain, I transmit to you six copies of the regulation that I have framed, and which must be observed until his Majesty shall have otherwise decided. It must be published in the same manner as is usual with respect to other general orders that concern the service of his Majesty, and you, sir, will give me due information of having executed it. God preserve you, sir, many years. New Orleans, 17th July, 1799.

JUAN VENTURA MORALES.

To the Command of St. Louis of Illinois.

On the margin of the original, are written by the Lieutenant Governor the words and letters,

Co. i. e. contestado—answered.

Ha. Nva. orden sin cumplimiento—*until further ordered, not executed.*

Letter from the Intendant General to the Lieut. Gov. of Upper Louisiana, relating to the powers and duties of the Surveyor of that Province.

In my official letter of this date, I say to the Captain Don Henrique Peyroux, subdelegate of the Intendency in the post of New Madrid, as follows: "Having before me the statement dated 31st of last July, made to me by the Surveyor of Upper Louisiana, Don Antonio Soulard, and also the communication dated 22d September last, on the same subject, made to me by the Surveyor General of Louisiana, Don Carlos Trudeau, I have to inform you, that, considering as Surveyor of the post of New Madrid the said Soulard, you must not prevent him from executing the surveys of land that may become necessary in that district, either by himself or by the person whom under his responsibility he shall commission, for this is necessary to the good order which I desire may be established on this subject, and the uniformity and subordination to the Surveyor General of this capital, with whom the others must co-operate." I communicate this to you, sir, that you understand and enforce it, informing me of the receipt of this official letter for my own government. God preserve, &c. New Orleans, 21st January, 1802.

JUAN VENTURA MORALES.

Sor. Don Carlos Dehault Delassus.

Official letter of the Intendant General to the Lieutenant Governor of Upper Louisiana, in which the Intendant recognises the Lieutenant Governor and the Commandant of the Post of New Madrid as subdelegates respectively, and in such capacity declares them to be independent of each other.

I have seen the instructions which you, sir, (in the belief that as Lieutenant Governor of the establishments of the Illinois, the officers of the royal treasury of the post of New Madrid, subject by order of the deceased Governor, Don Manuel Gayso de Lemos, to this command (that of New Orleans) must be subordinate to you) have framed for the government of the commandant Don Roberto Mackay, in his quality of subdelegate of the Intendency, and of the Magazine Keeper, Don Juan Lavellee, copies of which instructions you enclosed to me in your official letter of the 30th of June last, No. 59.

In answer, I must say, that, it being contrary to law that *one subdelegate* should transfer his powers to another, and it being opposed to the regularity of business that that should be certified upon report which is not present, the instructions given by you cannot nor ought not to have effect, and the more so inasmuch as the subdelegation of the Intendency is local, and that the Magazine Keeper cannot recognise as his immediate chief any other than those who exercise the subdelegation. For which reasons, without prejudice to the good understanding which the Commandant Mackay, or he who has succeeded him, shall have with you, in civil and military matters, and to their recourse to you for the supplies of provisions and other things of which the post may have need, I inform, by letter of this date, the Captain Don Henrique Peyroux, and the Magazine Keeper, Don Juan Lavellee, that they are not subordinate to you, the first as subdelegate of this Intendency,

and the second as Magazine Keeper. The service consequently being to be performed, and the documents to be drawn up in the same form as when you, sir, were commandant of that post independently of the Lieutenant Governor of the Illinois, and observing the instructions which shall be issued from this Royal Treasury office, and also the other orders of this Intendency. God preserve, &c.

New Orleans, 26th August, 1799.

JUAN VENTURA MORALES.

To Don Carlos Dehault Delassus.

Official Certificate by the Ministers of the Royal Treasury at New Orleans, in favor of the Lieutenant Governor of Upper Louisiana, whereby it appears that the Lieutenant Governor was vested with the power of subdelegate.

We, Don Gilberto Leonard, Treasurer of the Army, and Don Manuel Gonzalez Armires, ministers of the Royal Treasury, and formerly Accountant and Treasurer ad interim, respectively, of the province of Louisiana, during the Spanish Government, continuing our functions until the entire conclusion of the affairs of said departments, do certify, that, in pursuance of a decree of the Senor Intendant General ad interim, the Senor Colonel Charles D. Delassus, formerly commandant of the post of New Madrid and Lieutenant Governor of St. Louis of the Illinois, with the subdelegation of the Royal Treasury in both situations (con la subdelegacion de real Hacienda en ambos destinos) quitted this capital in the beginning of the year 1796, &c. &c.—[The rest of the certificate relates to the right of M. Delassus to certain emoluments in his above official capacities, and has no bearing on the matter of the agument.]—In order that this may authentically appear in favor of the said Colonel Don Carlos Dehault Delassus, and in virtue of the before recited decree, we give the present certificate at New Orleans, 27th June, 1805.

GILBERTO LEONARD.
MANUEL ARMIRES.

Note.—The above document was offered in the cause, and refused by the court, on the ground that it was executed and bore date subsequent to the 10th March, 1804.

[The Regulations of Morales are to be found in the Appendix to the last edition of the United States Land Laws.]

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